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No. 89-1927

Supreme Court, U.S.

FILED

SEP 12 1990

JOSEPH F. SPANOL, JR.

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF TEMPLE

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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1. Respondent argues that the question presented in the petition should be limited to the issue that it views as the analytical source of the conflict in the circuits—i.e., the correctness of the Sixth Circuit's interpretation of Section 165 of the Code in *Cottage Savings Ass'n v. Commissioner*, 890 F.2d 848 (1989), petition for cert. pending, No. 89-1965—and that that narrower question is not sufficiently important to warrant consideration by this Court. As we explain in our reply in *United States v. Centennial Savings Bank FSB (Resolution Trust Corporation Receiver)*, No. 89-1926 (a copy of which is being furnished to respondent), this suggestion is plainly misconceived. The lower courts are in disarray on all

of the subissues raised by the broader question on which the courts of appeals are in conflict—namely, whether an exchange of mortgages pursuant to the FHLBB's Memorandum R-49 gives rise to a deductible loss. The confusion in the lower courts can best be alleviated if this Court considers all the arguments relevant to this ultimate question, which would otherwise remain open to dispute even after this Court's decision.

2. In our petition, we noted that we had urged the Court to grant certiorari in *Centennial* as the lead case because it presents two distinct issues of major administrative importance and on which there exist conflicts in the circuits. See Pet. 7; *Centennial* Pet. 13 n.10. We also suggested that the Court might wish to grant plenary review in this case as well because it involved a solvent institution, not one in RTC receivership. *Ibid.* We have now been informed by the FDIC, however, that respondent went into receivership on August 24, 1990. In light of this development, there no longer appears to be any reason to grant plenary review in this case; rather, like the petition in *Commissioner v. San Antonio Savings Ass'n and Subsidiaries (Resolution Trust Corporation, Receiver)*, No. 89-1928, the petition in this case should be held and disposed of as appropriate in light of this Court's disposition of *Centennial*. If the Court also wishes to grant plenary review in a case involving a solvent institution, it should grant certiorari in *Cottage Savings Ass'n v. Commissioner*, No. 89-1965, or, alternatively, in *Commissioner v. Federal Nat'l Mortgage Ass'n*, No. 89-1987, although that case arises in an atypical factual context.

The petition for a writ of certiorari should be disposed of as appropriate in light of this Court's disposition of *United States v. Centennial Savings Bank*

*FSB (Resolution Trust Corporation, Receiver), No.
89-1926.*

Respectfully submitted.

JOHN G. ROBERTS, JR.
*Acting Solicitor General **

SEPTEMBER 1990

* The Solicitor General is disqualified in this case.